

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

LORETTA E. LYNCH

Attorney General

v.

UNDER SEAL

Case No. 15-cv-001180

~~FILED UNDER SEAL~~
PURSUANT TO
18 U.S.C. § 3511(d)

EXHIBIT 1

03/24/2015 03:01 #615 P.001/004

From:

(G)

(G)

CY-1

FACSIMILE SHEET

To:

(G)

FBI

(G)

Fax:

(G)

From:

(G)

Date:

March 23, 2015

Re:

CONFIDENTIAL MATTER

Pages (w/cover):

4

From:

03/24/2015 03:01

#615 P.002/004

(G)

(G)

(G)

March 23, 2015

Via Fax and Certified Mail

(G)

FBI -

(G)

(G)

James Baker
FBI Headquarters
Attention: General Counsel
935 Pennsylvania Avenue, NW
Washington, DC 20535-001
Fax: (202) 324-5366

FBI -

(G)

Re: Petition to Set Aside Non-Disclosure Provision of NSL

Dear Messrs (G) and Baker:

I am writing on behalf of (G) to inform you that (G) intends to file a petition pursuant to 18 U.S.C. 3511(h)(3) to set aside the non-disclosure provisions of the National Security Letter dated (G) bearing the file number (F). In advance of filing the petition, however, (G) is sending this letter for the purposes described below.

First, in this case, there remains a possibility that the government may agree that given the age of the NSL and the passage of time, the non-disclosure provision is no longer needed. If this is the case (G) petition may be unnecessary. Please let us know your response as soon as possible, but in no event later than April 3, 2015, after which time such a petition will be filed.

From:

03/24/2015 03:01

#615 P.003/004

Second, even if the government does not agree to lift the non-disclosure provision of the NSL, the government has represented to courts in the Ninth Circuit that when it receives a notice that a provider intends to challenge the non-disclosure aspects of a petition, it will initiate the judicial proceeding.¹ My understanding is that although the government has not adopted a formal policy, the usual practice is to seek judicial review within 30 days of a recipient objecting to an NSL, a practice adopted in order to remedy the constitutional deficiencies identified by the United States Court of Appeals for the Second Circuit in John Doe, Inc. v. Mukasey, 549 F.3d 861 (2d Cir. 2008), as modified (Mar. 26, 2009).²

While the government's prior representations on this point may be confined to initial challenges to petitions, (G) wants to give the government the opportunity to apply that policy to petitions that are sought to be commenced as part of the annual challenges set forth in 18 U.S.C. § 3511(b)(3). In the event that the government does intend to defend all aspects of the non-disclosure provision, please let us know by April 3, 2015 if the government intends to commence this proceeding. If it does not, (G) believes that the government's position on this matter should be made clear to the Court of Appeals for the Ninth Circuit, as a clarification of its prior statements, as the court considers its decision in In re Nat'l Security Letter, No. 13-16732 (9th Cir. 2013).

(G)

¹ In re Nat'l Sec. Letter, 930 F. Supp. 2d 1064, 1070 (N.D. Cal. 2013) ("...at the hearing before this Court, the government asserted that it was following the mandates imposed by the Second Circuit in the John Doe, Inc. v. Mukasey decision for all NSLs being issued, since it would be impracticable to attempt to comply with that decision only in the Second Circuit.").

² See also In re National Security Letter, Under Seal v. Holder (Sealed), U.S. Courts for Ninth Circuit (providing a download link for the audio recording of oral argument of October 8, 2014), http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000715; In re Nat'l Sec. Letter, 930 F. Supp. 2d 1064, 1070 (N.D. Cal. 2013).

(G)

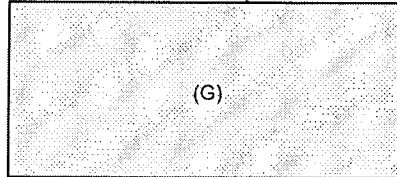
From:

03/24/2015 03:01

#615 P.004/004

If you have questions or are prepared to discuss the government's position in this matter,
please feel free to contact me.

Sincerely,



(G)